



The Comptroller General
of the United States

Washington, D.C. 20548

Pogany

Decision

Matter of: Southern Technologies Inc.

File: B-239431

Date: August 31, 1990

Gary J. LaPinsky for the protester.
Lester Edelman, Esq., Office of the Chief of Engineers,
Department of the Army, for the agency.
David Hasfurthur, Esq., Andrew T. Pogany, Esq., and John
Brosnan, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where agency fails to show that specification restriction requiring that hot water generator control system be designed, fabricated and delivered solely by the manufacturer is reasonable, solicitation should be amended to eliminate improper restrictive specification.

DECISION

Southern Technologies Inc. protests the terms of invitation for bids (IFB) No. DACA45-90-B-0020, issued by the Army Corps of Engineers for the removal and replacement of the high temperature hot water generators (boilers) at Wurtsmith Air Force Base, Michigan. According to the protester, the IFB improperly restricts the permitted sources for a component of the boilers, the central heating plant instrumentation and control panel (control system) to several very large manufacturers of instrumentation and control equipment. Southern contends that the requirement overstates the government's needs and, thereby, restricts competition by limiting the sources for this portion of the contract.

We sustain the protest.

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The IFB was issued on December 6, 1989. The majority of the work required by the IFB involves the removal of old generators and the installation of new ones in the base's central heating plant. The control system portion of the work involves the control panels for each of the four generators and the master control panel for the central heating plant. The control panel for each generator regulates the output of the generator, and the master control panel coordinates the overall output of all four generators. The relevant IFB provision is as follows:

"2.1 GENERAL DESIGN REQUIREMENTS

2.1.1 The Central Heating Plant Instrumentation and Control Panel, hereafter called the Control System, shall be specified, designed, furnished, fabricated, tested, and delivered by an instrumentation and control company who is also in the business of manufacturing the equipment.

2.1.2 The material and equipment shall, insofar as practical, be specified and furnished from the standard product line of a single manufacturer who is regularly engaged in the instrumentation and control system business and has been in the business for a minimum of 10 years. Equipment to be specified and furnished shall have performed satisfactorily in utility type applications for at least 2 years prior to bid opening."

Southern objects to the requirement in paragraph 2.1.1 that the control system be supplied only by a firm which manufactures controls and instruments because, in the protester's view, there is no correlation between the ability to manufacture products and the ability to integrate them into a system. The protester argues that the restriction unreasonably adversely affects system integrator firms like itself which assemble control systems comprised of other manufacturers' equipment and have the necessary specialized experience to produce a successful system; specifically, the protester states that the restriction improperly compromises its competitive position because the restriction would force it to subcontract for work it would

do itself. We agree with the protester that the provision is more restrictive than necessary to meet the agency's needs.^{1/}

An agency is required to specify its needs and select its procurement approach in a manner designed to promote full and open competition. See LaBarge Prods., Inc., B-232201, Nov. 23, 1988, 88-2 CPD ¶ 510. Restrictive provisions should only be included to the extent necessary to satisfy the agency's minimum needs. The contracting agency, which is most familiar with its needs and how to fulfill them, must make the determination as to its needs in the first instance. That determination must have a reasonable basis. Id.

The agency states that this requirement is necessary to ensure continuous and reliable operation and maintenance of the control system. The agency explains that the system being installed is not representative of a typical construction project, but is instead a major undertaking, and that the control system is the "brains" of the entire plant. To this end, the requirement ensures the procurement of a "standard" system that is put together with a combination of proven components which properly function with each other and which can be readily maintained by various sources. By requiring the control system portion of the work to be done by a manufacturer of instrumentation and control equipment that will also test, deliver and service this equipment, the agency states that it will be able to obtain a system that

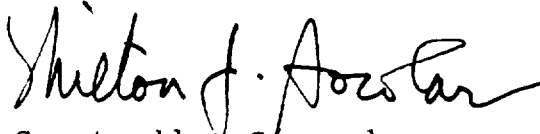
^{1/} The agency contends that the protest should be dismissed because a copy of the protest letter was not provided within 1 working day after the protest was filed with our Office and because the protest letter does not make clear whether Southern will be a subcontractor or a bidder on the procurement, that is, whether Southern has standing to protest. Southern's protest letter to our Office indicates that it mailed a copy to the agency. We also provided the agency with a copy of that letter. The agency was able to deliver its report to our Office by the scheduled report date and, therefore, in the absence of a showing that the agency was prejudiced by the late receipt of a copy of the protest, dismissal is not appropriate. Arlington Public Schools, B-228518, Jan. 11, 1988, 88-1 CPD ¶ 16. As to the second objection, by letter of January 8, 1990, Southern requested that the agency send it a copy of the solicitation and advised the agency that it was a small business and a prime contractor. We have no basis to find otherwise.

is familiar to in-house operating and maintenance personnel and to outside service organizations.

If a "one-of-a-kind" system were integrated, as Southern requests, with components from various manufacturers, the agency believes that it would be difficult to locate a firm other than the contractor which installed the system with the necessary knowledge to repair it. Further, parts for the different components might be difficult or impossible to obtain because the agency would have no reliable control over their sources.

We understand the need of the agency for a dependable system which can be properly serviced and maintained. We think, however, that the restriction in paragraph 2.1.1 goes too far because it unnecessarily places a limit on sources that could furnish the control system. We think the agency can meet its legitimate needs by an appropriate limitation on what may be furnished, rather than on who may furnish it. For example, the agency could remove the limitation in paragraph 2.1.1 and keep the current paragraph 2.1.2 which specifies that the system be a standard commercial product of one manufacturer or require that the system be one for which commercial sources for maintaining the system are available. Under such specifications, a dealer or an integrator could offer a conforming product by, for example, purchasing the system from a manufacturer and then furnishing and installing it. This provides for greater competition for the system but still provides the protection the agency seeks. Stated differently, we think the product, not the source of the product, is all that is relevant to the agency's needs. See Data Card Corp., Orbitran Division, B-202782, Oct. 8, 1981, 81-2 CPD ¶ 287.

We sustain the protest. By separate letter of today to the Secretary of the Army, we are recommending that the solicitation be amended to revise its specifications for the system in accordance with this decision. We also find Southern to be entitled to its costs of pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1990).



Acting Comptroller General
of the United States